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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,336	08/09/2001	Timur Mehmet Momol	UF-258CXC1	4420
23557	7590	11/28/2003	EXAMINER	
SALIWANCHIK LLOYD & SALIWANCHIK A PROFESSIONAL ASSOCIATION 2421 N.W. 41ST STREET SUITE A-1 GAINESVILLE, FL 326066669			COE, SUSAN D	
		ART UNIT	PAPER NUMBER	
		1654		
DATE MAILED: 11/28/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/925,336	MOMOL ET AL.	
	Examiner Susan Coe	Art Unit 1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 September 2003.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,13,20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,13,20 and 21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.      6) Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The amendment filed September 16, 2003, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 20 and 21 have been added.
3. Claims 1, 13, 20, and 21 are pending.

#### ***Claim Rejections - 35 USC § 103***

4. Claims 1 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Momol et al. (*Phytopathology* (June 1999), vol. 89, no. 6, pp. S54) in view of US Pat. No. 4,780,471 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this rejection have been fully considered but are not persuasive. Applicant argues that a person of ordinary skill in the art would not be motivated to combine ethyl alcohol and detergent as taught by US '471 with the thymol of Momol because US '471 teaches using ethyl alcohol and detergents as carrier for fungicides while Momol is directed to a bactericide. However, US '471 illustrates what is known in the art at the time of the invention. US '471 specifically uses ethyl alcohol and detergents in combination with fungicides that are applied to plant for the control of pathogens. Thus, US '471 shows that it was known in the art at the time of the invention to use ethyl alcohol and detergents in combination with insecticides. Momol is also applying an insecticidal substance to plants to control pathogens. Thus, a person of ordinary skill in the art would recognize that ethyl alcohol and detergents are well known carriers for insecticides that are used on plants. The artisan would be motivated to

add these substances to the thymol taught by Momol because carriers are common and well known ingredients to add to insecticides. Applicant also argues that the combination of the references is based on improper hindsight reasoning. However, since this combination is based on what was known in the art at the time of the invention, improper hindsight reasoning was not employed.

Applicant also argues that the addition of the ethyl alcohol and detergent to thymol produces unexpected results in regards to the dosage amount of thymol used. However, applicant has provided no data to support this assertion of unexpected results. See MPEP section 716.02 for information regarding claims to unexpected results.

In addition, applicant argues that Momol does not teach using the thymol on field tomatoes, only on greenhouse tomatoes. Applicant contends that a person of ordinary skill in the art would have no way of knowing whether the treatment would actually work in the field. However, a person of ordinary skill in the art would be able to determine without undue experimentation if the method taught by Momol on greenhouse tomatoes would be successful in the field. In addition, the artisan of ordinary skill would clearly understand the desirability of using this product to suppress *Ralstonia* associated wilt on field tomatoes because the reference clearly states that the wilt is a problem in field grown tomatoes. Therefore, Momol is still considered to render the claimed invention obvious.

5. No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner  
November 18, 2003

LEON B. LANKFORD, JR.  
PRIMARY EXAMINER